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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
COMMUNITY ANTENNA TELEVISION COMMISSION
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JOHN M. URBAN
Commissioner

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August 24, 1993

VIA FEDERAL EXPRESS

Hon. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: Rate Regulation - Cost of Service - Docket No. 93-215

Dear Ms. Searcy:

I have enclosed an original and ten (10) copies of the Comments of the Massachusetts Cable Television Commission for filing in connection with the captioned matter.

Please place me on the service list for this docket matter.

In addition, please mark one copy of these comments "filed" and return it to me in the envelope I have enclosed.

Please do not hesitate to contact me if you should have any questions in connection with this matter. In the meantime, I appreciate your assistance.

Sincerely,

John M. Urban
Commissioner

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	MM Docket No. 93-215
Rate Regulation Cost-of-Service	

COMMENTS OF THE
MASSACHUSETTS COMMUNITY ANTENNA TELEVISION COMMISSION

The Massachusetts Community Antenna Television Commission (the "Massachusetts Commission") is the state agency charged with regulating the cable television industry in Massachusetts pursuant to Massachusetts General Law Chapter 166A. The Massachusetts Commission's responsibilities include representing the interests of the Commonwealth of Massachusetts before the Federal Communications Commission (the "FCC"). M.G.L. 166A, §16 (1990). Therefore, the Massachusetts Commission has a direct interest in the outcome of this proceeding.

Executive Summary

We are responding to matters before the FCC in connection with the Notice of Proposed Rulemaking on Rate Regulation (the "Notice") dealing with cost-of-service rate makings for cable television. The FCC more than, perhaps, any other government body or agency, has gained knowledge and expertise with cost-of-

service proceedings. Therefore, the Massachusetts Commission will largely defer to the FCC's extensive expertise in conducting cost-of-service reviews. We have comfort that the FCC's background in dealing with these proceedings, coupled with the FCC's continued efforts in seeking to balance the policy goals of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act") will result in fair and reasonable cost-of-service procedures.

While we will largely rely on FCC guidance with this rulemaking, we wish to provide comment on five issues raised in the Notice. In summary, our recommendations on these five matters are as follows:

> First, we suggest that the FCC establish a one-year limit on the frequency of cost-of-service showings.
>
> Second, we recommend that rates determined by an initial cost-of-service showing should not be allowed to increase from the initial level unless the operator is able to show that there was an extraordinary reason for their September 30, 1992 rate to have been below that which was reasonable.
>
> Third, we recommend that if the FCC wishes to rely on sampled financial data reporting, it should do so with the provision that franchising authorities could elect, on their own, to require franchise-based reporting that would be filed at the state or local level.
>
> Fourth, we call on the FCC to, at the very least, create regulations that would exclude consideration of any future excessive acquisition costs. Yet, we maintain deep reservations about the fairness of disallowing any lawful acquisition costs that were incurred by the cable operator prior to passage of the 1992 Act.
>
> Fifth, we conclude that the FCC should proceed very cautiously with any cost averaging measures that would limit a local rate regulator's ability to determine a reasonable rate based on the characteristics of its own franchise area.

Our following comments expand upon and support these five statements.

Frequency of Cost-of-Service Reviews

The Massachusetts Commission (which oversees more than 300 franchise areas), like the FCC, is concerned about the heavy burden that would result if cable operators exercise widespread and frequent use of the cost-of-service option. Because cost-of-service showings are designed to be a regulatory release valve, the goal of minimizing the number of operators that resort to the cost-of-service option is best met, in our opinion, by making sure that the benchmarks predict a reasonable rate. Yet even if the benchmarks are refined to minimize the number of operators seeking cost-of-service showings, we are left with the question as to the frequency at which those operators will seek cost-of-service showings.

In the Notice, the FCC seeks comment on their proposal that ". . . once a cost-of-service showing has been evaluated by either the local franchising authority or the Commission, another such showing for the tier may not be made for one year." (Notice, Paragraph 17). We support this opinion. We believe that a high repeat incidence of cost-of-service showings would only further impose burdens on local and state cable regulators. We believe that an operator would be rightful in seeking a cost-of-service review if (but only if) significant, unanticipated events dramatically impact an operator's return, regardless of when the

operator last submitted a cost-of-service review for the given tier. Therefore, we suggest that the FCC establish a one-year limit on the frequency of cost-of-service showing.

Increasing Initial Rates By Cost-of-Service Showings

In its May 3, 1993 Rate Regulation Report and Order and Further Notice of Proposed Rulemaking (the "Report and Order"), the FCC stated that it ". . . generally presume[s] that basic service tier rates that are at, or below, the benchmark level on the date regulation begins are reasonable." (Report and Order, Paragraph 216). The FCC's foundation for this finding is the reasoning that absent both effective competition and rate regulation, cable operators were free to maximize profits to the extent that they could set pricing at (or above) a level that would have provided a reasonable return. Therefore, the FCC reasoned that it was safe to presume that their September 30, 1992 rates were reasonable.

In the Notice, the FCC now asks the corresponding question of whether or not the FCC's cost-of-service regulations should allow regulators to ". . . entertain cost-of-service applications to justify initial regulated rates higher than the systems' existing rates." (Notice, Paragraph 18). We believe that the logic that allowed the FCC to find, in its May 3, 1993 Report and Order, that September 30, 1992 rates were reasonable should follow here as well. It is our position that, save the very unlikely event of "special circumstances" or "extraordinary

costs" that warrant a waiver, operators should not be able to charge rates above those charged prior to regulation. Therefore, we recommend that rates should not increase from the initial level unless the operator is able to show that there was an extraordinary reason for their September 30, 1992 rate to have been below that which was reasonable.[1]

Financial Reporting

We agree with the FCC's assertion that ". . . in any cost-of-service showing, costs and supporting data [should] be presented on an FCC prescribed form and associated worksheets." (Notice, Paragraph 19). Most importantly, we believe that cable operators' financial reporting should be filed on standardized FCC's financial reporting forms. We believe that this will create uniform reporting, free local and state regulators from devising their own forms, and save operators from struggling with different financial forms for different franchise areas.

On a related matter, the FCC outlined, in a later portion of the Notice, its tentative conclusion is that ". . . instead of requiring reporting from each cable operator, we could rely on an

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[1] We expect, however, that some rates, such as converter rates, will increase as a result of rate regulation. For example, most Massachusetts operators have charged roughly $3 per month for a remote control. Under regulation, we expect the cost of remote controls to drastically decrease; correspondingly, we expect an increase in converter costs. Thus, the individual rate for converters will increase from $0 to that rate that reasonably reflects the cost of the converter. Therefore, we believe that it is necessary to state that initial cost-of-service showings should not allow for the *total* regulated rate, as opposed to individual rate items, to increase from the initial level.

annual survey of cable systems." (Notice, Paragraph 89). We report with some certainty that the cities and towns of Massachusetts would not favor the sampled reporting approach. Many communities would instead prefer franchise-by-franchise reporting. In addition, we report that for at least "Year One" of rate regulation, our office has reservations about a reliance on sampled reporting. Therefore, we recommend that if the FCC wishes to rely on sampled reporting, it should do so with the provision that franchising authorities could elect, on their own, to require franchise-based reporting that would be filed at the state and/or local level.

Excess Acquisition Costs

The FCC has stated that "[t]raditionally, excess acquisition costs have been excluded from the ratebase of regulated concerns, at least in part, because they are seen as inappropriate costs for the ratepayer to bear . . . [and that] . . . the presumption is that premiums reflect an expectation of monopoly earnings." (Notice, Paragraph 36).

The Massachusetts Commission considers excess acquisition costs to be a core issue. We have had an ongoing concern that certain cable systems face financial pressure that impacts the operations of their system, or the rates that they pay, because of their very high amounts of outstanding debt. It is one thing for a community's rates or service level to be affected by system density, demographics, topography, construction characteristics,

or franchise concessions. It is a very different matter for rates, or the level of service, to be affected by financial pressure caused by a high cost of debt that was assumed by a buyer (or buyers) that purchased the system with the expectation of monopoly profits.

While high debt costs have been an ongoing concern of this office, we find it difficult to equitably remedy this situation given that past acquisition behavior was within then-current transfer regulations. We believe that the ultimate correction of excessive debt burdens that resulted in the past may have to await the occurrence of competition.[2]

On a go-forward basis, we believe that the 3-year transfer restriction, which is included in Section 13 of the 1992 Act, will partially alleviate excessive acquisition costs that arise from trafficking licenses. Further, we call on the FCC to create regulations that would exclude consideration of any <u>future</u> excessive acquisition costs. With this said, however, we maintain deep reservations about the fairness of disallowing any lawful acquisition costs that were incurred by the cable operator prior to passage of the 1992 Act.

<u>Cost Averaging</u>

In its Notice, the FCC outlined a theoretical ". . . continuum between the poles of attempting to uniquely identify all the costs of a franchise, and MSO-wide cost averaging."

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[2] Some analysts have speculated that these high cost systems may be the first candidates for competition.

(Notice, Paragraph 60). The FCC outlined that there are significant administrative burdens associated with system-specific costing. The FCC alternatively outlined that while MSO-averaging reduces administrative burdens, it also diminishes a rate regulator's ability to prescribe rates that reflect the equipment and service in a specific franchise area.

We go on record as strongly opposing a MSO-average costing approach. If we had to select one end of the continuum versus another, we would select system specific pricing rather than MSO-averaging. If we were to select a point between these two polar extremes, we would select a point that is closer to system specific pricing.

Extensive averaging of cost-of-service data would likely represent the creation of yet another benchmark (a benchmark of costs, as opposed to rates). This would defeat the underlining merit of the benchmark/cost-of-service approach by creating a benchmark/*benchmarked cost-of service* approach.

If the FCC seeks to minimize cost-of-service burdens, we suggest that the FCC develop a procedural "road map" or a cost-of-service primer that could be used for cost-of-service hearings. In addition, we recommend the further refinement of the benchmarks to ensure that they are a useful regulatory tool that will be able to predict the vast majority of rate determinations.

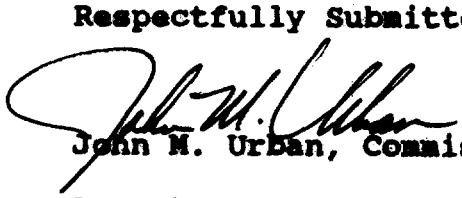
With this said as a guiding statement of our position, we wish to state that we will, at this time, largely defer to the

FCC's extensive expertise with specific issues dealing with cost averaging. Yet, we believe that the FCC should be fully cognizant of the negative perception (and the negative public policy impact) that would result from a rate regulator's finding that a rate determination would result in a reasonable return on costs when these costs are other than those costs resulting from a particular franchise area's cable service. We recommend that the FCC proceed very cautiously with any measure that would limit a rate regulator's ability to determine a reasonable rate based on the characteristics of a specific franchise area.

* * *

In closing, as always, we thank the FCC for the opportunity to comment on this process, and we wish to go on record to state our thanks to the FCC's staff who have been of continued assistance to us in dealing with the rate regulation issues that are before us.

Respectfully Submitted,



John M. Urban, Commissioner

August 24, 1993